

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Aug 31, 2022

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

KEVIN PATRICK McLEAN,

Defendant.

No. 2:21-CR-0024-WFN-1

STIPULATED PROTECTIVE ORDER
REGARDING COMPUTER
FORENSIC REVIEW PROCEDURES
FOR CHILD PORNOGRAPHY
CONTRABAND

Pending before the Court is the Parties' Stipulated Motion for Protective Order Regarding Computer Forensic Review Procedures for Child Pornography Contraband. ECF No. 55. The Child Victims' and Child Witnesses' Rights Act requires that certain privacy protections be put in place in this case. The nature of some of the discovery requires special procedures. The Court has reviewed the file and Motion and is fully informed. Accordingly,

IT IS ORDERED that:

1. The Parties' Stipulated Motion for Protective Order Regarding Computer Forensic Review Procedures for Child Pornography Contraband, **ECF No. 55**, is **GRANTED**.

2. Because 18 U.S.C. § 3509(m) applies to this case, the Court is required to deny defense requests to copy, photograph, duplicate, or otherwise reproduce material constituting child pornography if the government makes the material reasonably available to Defendant and provides an ample opportunity for the defense to examine it at a government facility. *See* 18 U.S.C. § 3509(m).

3. To comply with 18 U.S.C. § 3509(m), and to allow Defendant the greatest opportunity to prepare an effective defense in preparation for trial in this matter, the government will make a true forensic extraction and/or image of devices and media containing alleged child pornography contraband at issue in the above-referenced case. The

1 government will make that forensic extraction and/or image reasonably available to
2 Defendant and provide ample opportunity for the defense team to examine it at a government
3 facility in Spokane, Washington. The parties may readdress the Court if there is a need for
4 additional or after-hours access during the course of litigation in the event trial or motion
5 hearings require additional forensic review.

6 4. The defense forensic examination will be conducted in an interview room
7 monitored by closed-circuit television ("CC-TV"), without audio feed. While the TV with
8 non-audio feed will ensure the integrity of FBI/HSI space and security of its occupants, the
9 video feed is not of sufficient detail or at an angle that would reveal defense strategy. The
10 government and its agents expressly agree that no attempt will be made to record any audio
11 from the workstation and that no attempt will be made to observe the defense team's work
12 product or computer monitor screen at any time. The defense expert may review the feed to
13 ensure that defense strategy is not being compromised at any time while conducting the
14 forensic review.

15 5. The defense team¹ shall not make, nor permit to be made, any copies of the alleged
16 child pornography contraband pursuant to this Protective Order and shall not remove any
17 contraband images from the government facility. The defense expert will be allowed to copy
18 any file that is not contraband and compile a report (without contraband images/videos)
19 documenting the examination on removable media at the discretion of the defense expert.

20 6. The designated defense expert will leave at the government facility any
21 equipment, including hard drives, which contain child pornography contraband that is
22 identified during forensic evaluation. The parties may readdress this matter with the Court
23 upon notice that the defense intends to retain a different defense expert.

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26 ¹ For purposes of this Protective Order, the term "defense team" refers solely to Defendant's
27 counsel of record, Carl J. Oreskovich ("defense counsel"), members of Mr. Oreskovich's law
28 firm, Defendant's designated expert(s) ("defense expert"), and a defense investigator.

DATED this 31st day of August, 2022.

WM. FREMMING NIELSEN
SENIOR UNITED STATES DISTRICT JUDGE

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